

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
WESTPORT INSURANCE CORPORATION,

Plaintiff,

-against-

PATRICIA HENNESSEY, ESQ., and COHEN,
HENNESSEY, BIENSTOCK & RABIN, P.C.
f/k/a COHEN, HENNESSEY, BIENSTOCK, P.C.,

Defendants.
-----X

Case No. 07 Civ. 6726 (SHS) (RLE)

**DECLARATION OF
JOHN W. FRIED**

JOHN W. FRIED, an attorney duly admitted to practice law in the state of New York and in the United States District Court for the Southern District of New York, hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a member of the law firm of Fried & Epstein LLP, attorneys for defendants Patricia Hennessey, Esq., and Cohen Hennessey Bienstock & Rabin P.C. f/k/a Cohen Hennessey & Bienstock P.C.

2. I make this declaration in support of Defendants' motion for partial summary judgment and in opposition to Plaintiff's motion for summary judgment.

3. Attached hereto as Exhibit 1 is a true copy of Plaintiff's Complaint.


4. Attached hereto as Exhibit 2 is a true copy of Defendants' Answer and Counterclaims.

5. Attached hereto as Exhibit 3 is a true copy of Plaintiff's Reply to Counterclaims.

WHEREFORE, Defendants, by their undersigned attorneys, respectfully request that the Court grant their motion, pursuant to Rule 56 of the Federal Rules of Civil

Procedure, for partial summary judgment on Defendants' First, Second, and Fourth Counterclaims by (A) declaring that Plaintiff is obligated under its insurance policy to defend and to pay for Defendants' legal defense of an action entitled *Jayne Asher v. Patricia Hennessey, Esq., et al.*, Index No. 1361/2007 (Supreme Court, Westchester County) ("Asher Action"), (B) awarding Defendants damages, measured by the sum of money that they have paid and will pay to Snow Becker Krauss P.C. and McCarthy Fingar LLP, their attorneys in the Asher Action, based on Plaintiff having breached its insurance policy by disclaiming its duty to defend, (C) awarding Defendants damages, measured by the sum of money that they have paid and will pay to Fried & Epstein LLP to defend this declaratory judgment action, because Westport commenced this action "in an effort to free itself from its policy obligations," and, if that partial summary judgment is granted, for a dismissal without prejudice of Plaintiff's action or, in the alternative, for a stay of this action until after the final adjudication of the Asher Action, and for such other and further relief as the Court deems fair, just and equitable.

I, John W. Fried, declare under penalty of perjury that foregoing is true and correct. Executed on December 7, 2007.


By: _____
John W. Fried (JF2667)